

## APPEAL NO. 93023

This appeal arises under the Texas Workers' Compensation Commission Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp. 1992). On November 25, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that claimant did not timely report the alleged injury. Claimant's appeal discusses her problem with her leg. Respondent, carrier herein, states that the appeal is untimely and that the hearing officer correctly decided the case.

## DECISION

Finding that the appeal in this matter was not timely made, the decision of the hearing officer is the final administrative decision in this case. See Article 8308-6.34(h) of the 1989 Act.

Claimant, a substitute teacher, asserted at the hearing that she injured her leg when she stepped down a step at the (employer) on May 1, 1992. She notified her supervisor on August 1, 1992. The hearing officer found that she had pain continually, including May and June, and did not find good cause for her delay in giving notice.

The decision of the hearing officer was distributed, by mail, on December 15, 1992. Claimant does not say when she received it, so the provisions of Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h), Rule 102.5(h) apply and deem that she received it no later than December 20, 1992. She then had 15 days to file it with the Commission. See Article 8308-6.41(a) of the 1989 Act. Rule 143.3(c) then says that an appeal will be timely filed if placed in the mail no later than the 15th day after receipt if that mail is then received by the Commission no later than 20 days after appellant's receipt of the decision. Claimant's appeal is dated January 5, 1993, but it was received by the Commission on January 11, 1993. The envelope in which it came is without a stamp, without a postmark, and without any other indicia that it was ever placed in the postal system. Consequently, it can only be concluded that the appeal was hand delivered. As a result, the appeal was not filed with the Commission until January 11, 1993, beyond the statutory 15 days allowed for filing. In addition, the record of the hearing clearly indicates the hearing officer told both parties at the end of the hearing that an appeal had to be submitted to the Commission in Austin no later than the 15th day after receipt of his decision.

The decision of the hearing officer is final since no timely appeal was made.

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Joe Sebesta  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Philip F. O'Neill  
Appeals Judge